

Inventor: KLINGLER
Attorney Docket No. 41587.012502(346)
S/N 10/760,658

REMARKS

I. Phone Conference of August 10, 2005

Applicant gratefully acknowledges the Examiner's participation in the phone conference of August 10, 2005 with counsel for Applicant, as well as the Examiner's courtesy review of proposed claim amendments resulting from the discussion of the phone conference.

II. Improper Final Rejection

A final rejection may be made in the action immediately subsequent to the filing of a Request for Continued Examination (RCE) only if the conditions set forth in MPEP § 706.07(b) for making a first action final in a continuing application are met. MPEP § 706.07(h)(VIII). A first action in a continuing application may be made final if all claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. MPEP § 706.07(b).

In this case the amended claims contained additional elements, not present in the case prior to filing of the RCE, which should make the claim allowable or at the very least necessitate new grounds for rejection. However, the Examiner failed to properly consider these additional elements when issuing rejections of the claims, as is described in detail below.

Applicant therefore respectfully requests that, failing complete allowance of the claims in their current form, the Examiner change this Final Rejection to a Non-Final Rejection.

III. Claim Rejections Under 35 USC § 112

The Examiner has rejected claims 32-34 and 37-52 under 35 USC § 112, first paragraph,

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as failing to comply with the written description requirement. However, in light of the claim amendments entered herein, these rejections are rendered moot.

IV. Claim Rejections Under 35 USC § 102(b)

Claims 32-51 are rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,651,583 to Klingler et al. In light of the claim amendments entered herein, these rejections are rendered moot.

V. Claim Amendments

Claims 35 and 37 have been amended to remove unnecessary elements.

Claims 32, 37, and 48 have been amended to clarify the vertical orientation of the flap portions. Support for these amendments can be found in the originally-filed specification. For example, in the second sentence of paragraph [0022] of the published application (Publ. no. US 2004/0178670), it is stated that “[t]he connecting webs 10 form for the panel 8 a kind of pivoting axis, arranged parallel to the edges 6 of the archable element member 5.” The edges 6 referred to in this passage are the top and bottom horizontal edges. Thus the pivoting axis, which is parallel to the horizontal edges 6, is also horizontal. It is also clear that the above-quoted passage refers to the pivoting of the flaps, the flaps being referred to in the passage as panel 8. Panel 8 is made of two partial panels, an upper 11 and a lower 12 (third sentence of paragraph [0022]), which correspond to the “two oppositely oriented flaps” of the claims. Therefore, the amended claim element claiming “two oppositely-oriented flap portions attached to said lumbar support element by two connecting webs, said connecting webs forming a substantially horizontal axis on which said flap portions pivot” is completely supported by the original specification.

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Finally, claims 35 and 48 have been amended to change the term "circumscribed" to "completely surrounded" pursuant to a suggestion made by the Examiner during the aforementioned phone conference of August 10, 2005.

VI. Conclusion

Applicants respectfully submit that all of the independent and dependent claims are allowable over the prior art of record. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner finds that the application is unpatentable for any reason, Applicant hereby formally requests that the Examiner contact the undersigned by telephone at the number provided so that an interview may be scheduled.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

 8/30/2005

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